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12 SUPERIOR COURT OF THE COUNTY OF SAN FRANCISCO
13 STATE OF CALIFORNIA

14 RANDY THOMASSON and)
15 CAMPAIGN FOR CALIFORNIA)
16 FAMILIES)

17 Plaintiffs,)

18 vs.)

19 GAVIN NEWSOM, individually and)
20 in his official capacity as Mayor of the)
City and County of San Francisco, CA)
21 NANCY ALFARO, in her official capacity)
as the San Francisco County Clerk.)

22 Defendants.)

Case No.:

**VERIFIED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

23 Plaintiffs Randy Thomasson and Campaign for California Families (collectively,
24 “Plaintiffs”), by and through their undersigned counsel, do hereby allege as follows:

25 **INTRODUCTION**

26 1. Pursuant to Family Code § 300 “marriage” is defined as a “personal relation arising
27 out of a civil contract between a man and a woman, to which the consent of the parties capable of
28

1 making that contract is necessary.”

2 2. Family Code § 301 further provides that those capable of providing consent to a
3 marriage are “[a]n unmarried male of the age of 18 years or older, and an unmarried female of the
4 age of 18 years or older”

5 3. On March 7, 2000, the citizens of California voted in favor of and passed Proposition
6 22, which was incorporated into California law as Family Code § 308.5 (hereinafter “Proposition
7 22”). Proposition 22 states that “[o]nly marriage between a man and a woman is valid or recognized
8 in California.”

9 4. On or about February 10, 2004, Mayor Newsom issued a letter to County Clerk
10 Nancy Alfaro directing her to “determine what changes should be made to the forms and documents
11 used to apply for and issue marriage licenses in order to provide marriage licenses on a non-
12 discriminatory basis, without regard to gender or sexual orientation.” *See* Letter to County Clerk,
13 attached as **Exhibit 1** and incorporated herein (hereinafter “Directive”).

14 5. On or about February 10, 2004, Mayor Newsom issued a press release explaining the
15 reason behind the Directive. The press release indicates that the purpose of the Directive was to
16 allow gays and lesbians the ability to obtain marriage licenses. *See* Mayor’s Press Release, attached
17 as **Exhibit 2** and incorporated herein.

18 6. Plaintiff is informed and believes that County Clerk Alfaro intends to implement the
19 Directive and issue marriage licenses so that women can marry women and men can marry men.
20 Plaintiff bases his belief on newspaper reports, including a report stating that Clerk Alfaro “said she
21 would work diligently to implement the mayor’s request” *See* Article from SFGate.com,
22 incorporated herein and attached as **Exhibit 3**.

23 7. As of February 11, 2004, the website for the Office of the County Clerk set forth the
24 requirements for obtaining a marriage license, which included the requirement that “[o]nly an
25 unmarried male and an unmarried female may marry in California.” *See* Requirements for a Marriage
26 License, attached as **Exhibit 4** and incorporated herein.

27 8. As of February 11, 2004, the Application for Public Marriage License required the
28 applicants to sign an affidavit stating that “We, the undersigned, an unmarried man and unmarried

1 woman, state that the foregoing information is correct and true to the best of our knowledge and
2 belief, that no legal objection to the marriage nor to the issuance of a license is known to us, and
3 hereby apply for a license and certificate of marriage.” *See* Application for Public Marriage License,
4 attached as **Exhibit 5** and incorporated herein.

5 9. As of February 11, 2004, the Application for Public Marriage License specifically
6 referred to the “Groom’s Personal Data” and the “Bride’s Personal Data.”

7 10. The Directive to County Clerk Alfaro is invalid because it is in direct conflict with
8 the California Family Code, including Proposition 22.

9 11. Plaintiffs are asking this Court to declare the Directive invalid and permanently enjoin
10 Defendants from issuing marriage licenses to same-sex couples.

11 12. Plaintiffs petition this Court for an award of attorney’s fees pursuant to California
12 Code of Civil Procedure § 1021.5.

13 **STATEMENT OF LOCATION**

14 13. The Superior Court of the County of San Francisco is the proper location as this
15 action is a non-commercial, non-tort, non-complex civil matter against the Mayor of the City and
16 County of San Francisco and the San Francisco County Clerk.

17 **PARTIES**

18 14. Plaintiff Randy Thomasson is an individual residing in Yolo County, California, who
19 voted in favor of Proposition 22, and who has paid taxes to the State of California during the past
20 year.

21 15. Plaintiff Campaign for California Families, which actively campaigned for the
22 passage of Proposition 22 on behalf of constituents located throughout the State of California, is a
23 Sacramento-based nonprofit family values organization serving taxpaying families throughout
24 California.

25 16. Defendant Gavin Newsom (hereinafter “Mayor Newsom”), at all times relevant
26 herein, was acting under color of law and is being sued in both individually and in his official
27 capacity as Mayor of the City and County of San Francisco.

28 17. Defendant Nancy Alfaro (hereinafter “Clerk Alfaro”), at all times relevant herein, was

1 acting under color of law and is being sued in her official capacity as San Francisco County Clerk.

2 #

3 **FACTS**

4 18. Pursuant to California Family Code, only an unmarried male and an unmarried female
5 are capable of consenting to a marriage.

6 19. California Family Code § 300 defines marriage as “a personal relation arising out of a
7 civil contract between *a man and a woman*, to which the consent of the parties capable of making
8 that contract is necessary.” (Emphasis added).

9 20. Pursuant to Proposition 22, enacted as Family Code § 308.5, “[o]nly marriage
10 between a man and a woman is valid or recognized in California.”

11 21. Marriages between couples of the same sex are not valid or recognized in California.

12 22. On February 10, 2004, Mayor Newsom issued the Directive, requesting that Clerk
13 Alfaro make changes to documents for issuing marriage licenses in order to provide licenses to
14 same-sex couples.

15 23. The Directive was an *ultra vires* act by Mayor Newsom.

16 24. Mayor Newsom knew or should have known that the Directive and any actions
17 implementing the Directive are a blatant violation of California law.

18 25. Mayor Newsom knew or should have known that as Mayor of the City and County
19 of San Francisco, he was without authority to alter the marriage laws in the State of California.

20 26. In a February 10, 2004 article, Defendant Alfaro is quoted as saying that she did not
21 know whether the Mayor had authority to alter the marriage licenses to allow for same-sex
22 marriages. *See* SF Gate Article attached as **Exhibit 6** and incorporated herein.

23 27. Plaintiffs are informed and believe that during the next several weeks Defendants,
24 or those under their administrative control, will change the marriage license forms to comply with
25 the Directive. *See* Exhibit 6.

26 **FIRST CAUSE OF ACTION**

27 **Issuing Marriage Licences to Same-Sex Couples**

28 **Violates the California Family Code**

1 28. Plaintiffs hereby incorporate and adopt each and every allegation in the proceeding
2 paragraphs numbered 1 through 27.

3 29. Marriage in California is defined as a “personal relation arising out of a civil contract
4 between a man and a woman, to which the consent of the parties capable of making that contract is
5 necessary.”

6 30. California Family Code § 301 provides that those capable of providing consent to a
7 marriage are “[a]n unmarried male of the age of 18 years or older, and an unmarried female of the
8 age of 18 years or older”

9 31. Proposition 22 further explains that only marriage between one man and one woman
10 is valid and recognized in California.

11 32. Any action taken by Defendants to grant marriage licenses is in violation of the
12 California Family Code, including Proposition 22.

13 33. Mayor Newsom is without power to amend the California Family Code, including
14 Proposition 22.

15 34. The Directive is an attempt to nullify the effect of California Family Code, including
16 Proposition 22.

17 35. Absent the issuance of an injunction, Plaintiffs will be deprived of their constitutional
18 right to prohibit invalidation of the effect of statutes enacted by voter initiatives.

19 36. Absent the issuance of an injunction, the County Clerk’s office will begin issuing
20 marriage licenses to same-sex couples, in violation of state law.

21 37. A justiciable controversy exists over the legality of the Directive and actions
22 implementing the Directive, which requires this Court to decide the issues presented.

23 38. A judicial declaration is necessary and appropriate at this time as Defendants have
24 plainly stated their intent to issue marriage licenses to same-sex couples in violation of California
25 Family Code, including Proposition 22.

26 39. There is no plain, adequate or speedy remedy at law that is applicable herein.

27 40. If an injunction is not issued, Plaintiffs will be deprived of their fundamental right
28 to have their vote in favor of Proposition 22 afforded proper treatment.

1 41. Pursuant to the California Constitution, Proposition 22 may not be amended without
2 a further vote of the people.

3 42. Unless enjoined and restrained by this Court, Plaintiffs' rights will continue to be
4 violated, funds will be expended to carry out the Directive, and the Defendants will continue to act
5 unlawfully and without authority.

6
7 **SECOND CAUSE OF ACTION**

8 **Local Regulation of Marriage Licenses is Preempted by the State of California**

9
10 43. Plaintiffs hereby incorporate and adopt each and every allegation in the proceeding
11 paragraphs numbered 1 through 42.

12 44. Marriage a matter of statewide concern.

13 45. Defining who can marry is not a permissible function of a municipality in California.

14 46. Determining whether same-sex couples can marry is a matter of statewide concern.

15 47. Recognizing marriages is a matter of statewide concern

16 48. San Francisco is a home rule charter city.

17 49. Home rule charter cities remain subject to and are controlled by applicable general
18 state laws and matters of statewide concern.

19 50. The California Family Code, including Proposition 22 preempted the field regarding
20 the regulation of marriage and precludes local regulation of marriage.

21 51. The California Family Code demonstrates the intent and purpose to occupy the field
22 of who may marry to the exclusion of municipal regulation.

23 52. The language of Proposition 22 demonstrates the intent and purpose to occupy the
24 field of who may marry to the exclusion of municipal regulation.

25 53. Since state law has preempted the field, the Directive is *ultra vires*.

26 54. The Directive directly conflicts with California Family Code, including Proposition
27 22.

28 55. Attempts to comply with the Directive, to change marriage license forms and to issue

1 marriage licenses to same-sex couples are *ultra vires* acts.

2 56. Unless enjoined and restrained by this Court, Plaintiffs' rights will continue to be
3 violated, funds will be expended to carry out the Directive, and the Defendants will continue to act
4 unlawfully and without authority.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for judgment as follows:

8 A. That this Court, pursuant to California Code of Civil Procedure §§ 525 and 526(a)
9 immediately issue an order temporarily restraining Defendants, their agents, servants and employees
10 and those acting in active concert and with actual notice thereof, from, implementing the Mayor's
11 Directive, revising forms and documents used to apply for and issue marriage licenses, issuing
12 marriage licenses to same-sex couple and from illegally expending public funds.

13 B. That this Court, pursuant to California Code of Civil Procedure §§ 525 and 526(a)
14 immediately issue a Preliminary Injunction enjoining Defendants, their agents, servants and
15 employees and those acting in active concert and with actual notice thereof, from, implementing the
16 Mayor's Directive, revising forms and documents used to apply for and issue marriage licenses,
17 issuing marriage licenses to same-sex couple and from illegally expending public funds.

18 C. That this Court, pursuant to California Code of Civil Procedure §§ 525 and 526(a)
19 immediately issue a Permanent Injunction enjoining Defendants, their agents, servants and
20 employees and those acting in active concert and with actual notice thereof, from, implementing the
21 Mayor's Directive, revising forms and documents used to apply for and issue marriage licenses,
22 issuing marriage licenses to same-sex couple and from illegally expending public funds.

23 D. That this Court render a Declaratory Judgment that the Mayor's Directive and actions
24 to implement the Directive are invalid insofar as such Directive and actions violate California Family
25 Code and Plaintiffs' voting rights.

26 E. That this Court adjudge, decree, and declare the rights and other legal relations with
27 the subject matter here in controversy, in order that such declaration shall have the force and effect
28 of final judgment;

1 F. That this Court retain jurisdiction of this matter for the purpose of enforcing this
2 Court's order;

3 G. That this Court award Plaintiffs damages, together with the reasonable costs and
4 expenses of this action, including attorney's fees, in accordance with California Code of Civil
5 Procedure § 1021.5; and

6 H. That this Court grant such other and further relief as this Court deems equitable and
7 just under the circumstances.

8 Respectfully Submitted,

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VERIFICATION

I, RANDY THOMASSON, DECLARE AS FOLLOWS:

I am an individual plaintiff in the above-captioned matter. I am also the founder and director of Campaign for California Families, a non-profit corporate plaintiff in the above-captioned matter, organized and existing under the laws of California. I have been authorized to make this verification on behalf of Campaign for California Families. I have read the foregoing document entitled Verified Complaint for Declaratory Relief and Preliminary and Permanent Injunctive Relief and know the contents thereof. The matters set forth in the foregoing document are true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

Executed on February 11, 2004, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

x _____